IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.89 OF 2005

Manisha L. Shah @ Manisha
Jayesh Kesaria & Ors. ...Appellants

Vs.

Shree Alankar Co-op Hsg.Soc. & anr. ...Respondents

Mr. N.V.Walawalkar i/b Mr.M.K.Shukla for the Appellants
Mr. Asvin Bhalekar for the Respondent Nos.1 to 4.
Mr.R.V.Govilkar for Respondent Nos.5 to 8.
Mr.J. Xavier for B.M.C.

CORAM: A.S.OKA, J.

DATED: JANUARY 31, 2005.

P.C.:

1. Heard Counsel for the parties. The challenge in this Appeal is to the order dated 12th January 2005 passed by the learned Judge of City Civil Court, Mumbai. By the said order Ad-interim relief is partly granted in favour of the Appellants. The Notice of Motion is kept on 3rd February 2005 in the City Civil Court, Bombay.

2. At the outset, Shri Govilkar, learned Counsel for the Respondent Nos.5 to 8 states that till the final disposal of the Notice of Motion, the said Respondents will not construct staircase in terms of Clause 13 of the Consent terms in L.C.Suit No.5283 of 2004. He states that Clauses 17 and 18 of the Consent Terms have already been acted upon.

3. Shri Walawalkar, learned Counsel for the Appellants submitted that considering the manner in which the Consent Terms are entered into in the suit, till the disposal of the Notice of Motion, the Respondents should be restrained from taking any further steps on the basis of the Consent Decree.

4. The learned Trial Judge has already protected the Appellants by directing the original Defendant Nos.5 to 8 not to make any entry for going to the first floor premises inside the shop. Further statement is made by the learned Counsel for the Respondent Nos. 5 to 8 is that till the Notice of Motion is heard, the said Respondent Nos.5 to 8 will not construct staircase. Shri Walawalkar submits that if any, application is made by the Respondent Nos.5 to 8 to the Municipal Corporation for grant of permission, the Appellant should be heard.

5. Since the Notice of Motion is pending, I am not recording any specific finding on the merits. Suffice here to say that pending the Notice of Motion, the Appellants are sufficiently protected in so far as making openings from the shops for approaching the first floor and the construction of staircase is concerned. Considering the facts and circumstances of the case, I find that the Appellants are not entitled to any further ad-interim relief at this stage. It must be recorded here that the statement made by Shri Govilkar that the

Respondent Nos.5 to 8 will not construct staircase on the basis of the consent decree till the final disposal of the Notice of Motion is accepted. Shri Govilkar states that the Respondent No.7 is personally present in the court.

6. Subject to above observations, Appeal is not entertained and the same is dismissed with no order as to costs.

7. The learned Trial Judge will hear and decide the Notice of Motion for temporary injunction taken out by the Appellants within twelve weeks from today.

8. It is needless to say that the Notice of Motion will be considered on its own merit without being influenced by the reasons recorded while granting ad-interim relief and confirmation thereof by this Court.

9. Parties to act upon an authenticated copy of this order.

Judge.